

**PATENT**Atty Docket No.: 200309084-1  
App. Scr. No.: 10/679,092**REMARKS**

Favorable reconsideration of this application is respectfully requested in view of the following remarks.

Claims 1-30 are pending in the present application of which claims 1, 18, 20-22, 24, and 26-30 are independent.

Claims 1-30 are subject to an election of species requirement. The election requirement sets forth two species as follows: Species 1 associated with claims 1-17, 20-22 and 26-29 and Species 2 associated with claims 18-19, 23-25 and 30.

Species 1 is elected with traverse.

**MPEP section 808.02 Establishing Burden** recites the following:

Where, as disclosed in the application, the several inventions claimed are related, and such related inventions are not patentably distinct as claimed, restriction under 35 U.S.C. 121 is never proper ( MPEP § 806.05). If applicant voluntarily files claims to such related inventions in different applications, double patenting may be held.

Where the \* inventions as claimed are shown to be independent or distinct under the criteria of MPEP § 806.05(c) - § 806.06, the examiner, in order to establish reasons for insisting upon restriction, must explain why there would be a serious burden on the examiner if restriction is not required. Thus the examiner must show by appropriate explanation one of the following:

(A) **Separate classification thereof:** This shows that each invention has attained recognition in the art as a separate subject for inventive effort, and also a separate field of search. Patents need not be cited to show separate classification.

(B) **A separate status in the art when they are classifiable together:** Even though they are classified together, each invention can be shown to have formed a separate subject for inventive effort when the examiner can show a recognition of separate inventive effort by inventors. Separate status in the art may be shown by citing patents which are evidence of such separate status, and also of a separate field of search.

(C) **A different field of search:** Where it is necessary to search for one of the inventions in a manner that is not likely to result in finding art pertinent to the other invention(s) (e.g., searching different classes/subclasses or electronic resources, or employing different search queries, a different field of search is shown, even though the two are classified together. The indicated different field of search must in fact be pertinent to the type of subject matter

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covered by the claims. Patents need not be cited to show different fields of search.

Where, however, the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field of search, no reasons exist for dividing among independent or related inventions.

The Office Action fails to establish that there would be a serious burden on the Examiner to examine all the claims in the application. As stated above, the Examiner must show a serious burden by appropriate explanation of one of the following: separate classification; evidence of separate status in the art; or different field of search. No such explanation has been provided and thus the election requirement is improper and must be withdrawn.

Furthermore, many of the steps of independent claims in the different species are similar and thus there would be no serious burden on the Examiner to examine both species. For example, claim 1 in Species 1 recites,

receiving from a device via an insecure communications channel at least one shared secret in encoded form that functions as an identifier of the device;

transmitting encrypted content via the insecure communications channel from a content server to the device.

Independent claim 18 in Species 2 recites,

sending a shared secret in an encoded form to a content server via an insecure communications channel;

downloading from the content server an encrypted content via the insecure channel.

Both claims are directed to communicating a shared secret via an insecure communications channel and downloading content via the insecure channel. Thus, a search for both species would include the same classes and subclasses.

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In addition, it appears dependent claim 23 was incorrectly put in Species 2. Claim 23 is dependent on independent claim 22, which is in Species 1. Claim 23 is directed to sending a confirmation upon payment by a user. Species 2 was described in the election requirement as communications between a device and content server through an insecure channel. Since claim 23 does not recite communications between a device and content server through an insecure channel, it should also be in Species 1.

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**Conclusion**

In light of the foregoing, withdrawal of the election requirement and examination of all of the claims of this application are respectfully requested.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the above-identified application, please contact the undersigned at the telephone number listed below.

Please grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 08-2025.

Respectfully submitted,

Dated: January 4, 2008

By



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